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OGC Has Reviewed

11 March 1944

Chief, Finance Branch

Legal Division

Payment of claims for alterations and repairs to OAS buildings

1. Please refer to your memorandum of 7 February 1944 relating to this subject, with the attached claims of [REDACTED] both of which are returned herewith.

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2. As your memorandum points out, there is no specific provision in the OAS appropriation language for repairs to or alterations in public buildings occupied by OAS, although under some circumstances, discussed below, basis for such expenditures might be found in the general language. "For all expenses necessary to enable the Office of Strategic Services to carry out its functions and activities * * *". Further, the statutes referred to in your memorandum vest charge of public buildings occupied by OAS in PFA (40 U. S. C. 19), and prohibit the expenditure of funds for repair purposes greater than the amount specifically appropriated (41 U. S. C. 14).

3. It does not follow from the foregoing, however, that this agency is powerless to expend regularly appropriated funds for alterations and improvements to public buildings occupied by it. Even though an appropriation for repairs and improvements may have been made to the agency charged with the supervision of public buildings, the agency occupying the buildings may properly expend generally appropriated funds for such repairs, alterations and improvements where the latter are not necessary to the ordinary use or operation of the building but are to accommodate special functions or activities of the agency for which funds have been generally appropriated. 16 C. G. 816; see also 16 C. G. 160; 17 C. G. 389. The determinative factor is the relationship borne by the expenditures to proper agency objectives; e. g., generally appropriated funds may not be used to make space in public buildings available for occupancy by a government office force, even though the PFA appropriation may be inadequate for such purposes. 17 C. G. 1050. The only justification for such expenditures is that the building repairs and improvements are necessary to the proper functioning of the agency and are incidental to the accomplishment of some activity or objective of the agency recognized directly or indirectly by the appropriation act.

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4. We therefore recommend that, where security considerations permit, payment for repairs and alterations falling within the class described in the foregoing paragraph be made out of .001 funds. (In the first instance, as your memorandum points out, all repairs and improvements should be procured from FFA, wherever possible to do so, and recourse may be had to any appropriated fund of this agency only where it is impossible to call on FFA, or where FFA is for any reason unable or unwilling to effect the necessary repairs or alterations.)

5. We recognize that the rule set forth above with respect to .001 funds will be difficult of application in many cases, and the Finance Branch may be reluctant to undertake the advance determination of the question how a given expenditure is to be classified with reference to the rules enunciated by the Comptroller General in his decisions cited above. If any doubt exists, such charges may properly be made against .002 funds, as the statutes cited in paragraph 2, EMRA, cannot be considered to prohibit the expenditure of .002 funds for making repairs, alterations and improvements where the services and facilities of FFA cannot be utilized. 19 C. G. 926, 930, in re T. N. Wilson, Inc., 24 F. Supp. 651 (E. D. N. Y. 1938).

6. Unvouchered funds are, of course, available for such expenditures where, for security reasons, the cost cannot be charged against .001 or .002 funds. Generally speaking, the use of unvouchered funds for such purposes should be restricted to situations where security considerations do not permit the use of FFA personnel, materials and equipment on the project, nor any disclosure of the existence of the project.

7. With reference to the attached claims, it appears from the file that plans and specifications were furnished by Public Buildings Administration, FFA, but that security necessitated outside contracting. It does not appear, however, that security requires that the very existence of the project be kept secret, or that disclosure of the nature and extent of the repairs and alterations involved would be prejudicial to the best interests of this agency. Hence we do not believe payment out of .003 funds would be appropriate.

8. Nor do we believe that this is a clear case where .001 funds may be used. Assuming that the necessity of the work done to the proper functioning of the agency can be shown, it might not be possible to present such proof for security reasons.

9. It is therefore our opinion that the claims represented by the attached invoices may properly be charged against .002 funds.

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